



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 3038-99

28 October 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 1 July 1947 at age 17. The record shows that you served without incident until 20 December 1948. On that date you were convicted by a general court-martial of the theft of rifles, carbines, pistols and a truck from the United Nations warehouse in the City of Haifa, Palestine. The court sentenced you to reduction to private, forfeiture of all pay and allowances, 10 years confinement at hard labor and a dishonorable discharge.

On 7 June 1949 the Secretary of the Navy set aside the findings of guilty and ordered that you be released from arrest and restored to duty. On 1 July 1949 the Commanding General, 2nd Marine Division, recommended an undesirable discharge and stated, in part, as follows:

.... The Judge Advocate General's opinion on this case, dated 12 May 1949, indicated that Charge I was set aside because of the inadmissibility of the accused's confession. This ruling was based on the fact that the accused, prior to making his original confession in Palestine, had been led to believe that he would "get off light" or receive lenient treatment. Although

subsequent confessions or admission of complicity in the offenses alleged ... were made here at Camp Lejeune, and neither duress nor promise of leniency was made to obtain them, it was held that, in the absence of evidence to the contrary, the original promise of leniency was still operative on the mind of the accused.

... In view of the restoration of the subject-named man to duty, the undersigned believes it advisable to bring to the attention of the commandant the fact that (he) has freely admitted acts which brand him as a very poor security risk, and as undesirable for retention in the Corps.

On 19 July 1949, the Commandant of the Marine Corps noted that the Secretary of the Navy had disapproved the general court-martial because there was insufficient admissible evidence to sustain a finding of guilty, and concludes that an undesirable discharge based on that court-martial was not warranted.

Subsequently, you were reprocessed for discharge because you had demonstrated anit-moral traits of character and a criminal nature. It was noted that your loyalty to the Marine Corps and your country were highly questionable and your retention was not in the best interest of the Marine Corps.

On 6 September 1949 an administrative discharge board met in Headquarters, Marine Corps (HQMC) and recommended by a 2 to 1 vote that you be discharged for unfitness with an undesirable discharge. The dissenting member noted that there was no substantial change in the case as previously presented to the Commandant when he decided that an undesirable discharge was not warranted. On 9 September 1949, the Director of Personnel, HQMC directed an undesirable discharge and you were so discharged on 14 October 1949.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and limited education. The Board also considered your contention, in effect, that the undesirable discharge was improper because it was based on the general court-martial conviction which had been set aside. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your commission of serious misconduct. The Board noted that you confessed to selling the arms and equipment, and the action to set aside the court-martial was based on factors other than your guilt or innocence. In addition, the Board considered a report from the Federal Bureau of Investigations which shows post service convictions of armed robbery, possession of stolen property and sale of narcotics. The Board concluded that

the seriousness of your misconduct made an undesirable discharge appropriate in your case.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director